

EXHIBIT 14

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

_____^X
In Re: Chapter 11

Case No.
01-01139 JKF
W.R. Grace & Co., et al.,

Debtors. (Jointly Administered)
_____^X

* * * CONFIDENTIAL * * *

— — —
May 13, 2009
— — —

DEPOSITION of RICHARD FINKE, held
at the offices of Kirkland & Ellis, 655
Fifteenth Street, N.W., Washington, DC,
commencing at 9:32 A.M., on the above
date, before Lisa Lynch, a Registered
Merit Reporter, New Jersey Certified Court
Reporter, License No. XI00825, and
Certified Realtime Reporter

— — —
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Page 8

INDEX EXAMINATION

Witness Name	Page
3 RICHARD FINKE	
4 BY MR. BROWN	12,333
5 BY MS. ALCABES	129
6 BY MR. LEWIS	187
7 BY MR. PLEVIN	265
8 BY MR. WISLER	285
9 BY MR. COHN	289
10 BY MR. MANGAN	296
11 BY MR. DOWNEY	305, 371
12 BY MR. SCHIAVONI	343
13 BY MR. SPEIGHTS	347

EXHIBITS

EXHIBIT	DESCRIPTION	ID
16	Exhibit 1 Notice of Deposition of Debtors Pursuant to Rule 30(b)(6)	16
17		
18	Exhibit 2 Document entitled W.R. Grace/Confirmation Hearing 30(b)(6) Deposition Notice	16
19		
20	Exhibit 3 SEC Form 8-K	25
21		
22	Exhibit 4 Exhibit 6 to Exhibit Book, 41 Asbestos Insurance Transfer Agreement	
23		
24	Exhibit 5 Exhibit 19 to Exhibit Book, Retained Causes of	53

Page 9

EXHIBITS

EXHIBIT	DESCRIPTION	ID
2		
3	Exhibit 6 Exhibit 2 to Exhibit Book, 55 Asbestos PI Trust Agreement	55
4		
5	Exhibit 7 Exhibit 4 to Exhibit Book, 55 Trust Distribution Procedures	55
6		
7	Exhibit 8 First Amended Joint Plan of Reorganization	70
8	Exhibit 9 Exhibit 5 to Exhibit Book, 92 Schedule of Settled Asbestos Insurers Entitled to 524(g) Protection	92
9		
10	Exhibit Settlement Agreement	98
11	10 Bates stamped OB 1 through 33	
12		
13	Exhibit Travelers/Allstate 30(b)(6) deposition notice	135
14	Exhibit Travelers 30(b)(6) supplemental deposition notice	136
15		
16	Exhibit Grace/Aetna Asbestos Settlement Agreement dated May 22, 1996	149
17		
18	Exhibit Exhibit 25 to Exhibit Book, CMO for Class 7A Asbestos PD Claims	178
19		
20		
21		
22		
23		
24		

Page 10

DEPOSITION SUPPORT INDEX

Direction to Witness Not To Answer

Page Line Page Line

30 2 37 12

37 17 39 8

39 15 369 1

Request For Production of Documents

Page Line Page Line

(None)

Stipulations

Page Line Page Line

(None)

Questions Marked

Page Line Page Line

(None)

- - - -

Page 12

MS. HARDING: I just wanted to make a statement on the record that the debtors have designated Mr. Finke to answer certain appropriate questions related to certain 30(b)(6) topics.

As we've indicated, Mr. Finke will be available for seven hours today. We've also designated Mr. Hughes and Mr. LaForce to answer other 30(b)(6) topic questions. We are hoping and expecting that the parties seeking to ask questions have coordinated so that we can end in seven hours and we think it's a reasonable expectation.

The debtors have reviewed the deposition of Mr. Lockwood and agree, in essence, with Mr. Lockwood's answers with respect to how the Plan operates and so we think and are very hopeful that there will not be a need to go

Page 11

RICHARD FINKE,
having been sworn by the Notary
Public of the States of New York
and New Jersey, was examined and
testified as follows:

EXAMINATION BY

MR. BROWN:

Q. Good morning, Mr. Finke.

My name is Michael Brown. I represent One
Beacon, Seaton, Geico and Republic for the
objecting insurance companies in the Grace
bankruptcy. You've been deposed several
times before, correct?

A. Yes, I have.

Q. Okay. So we can dispense
with the formalities of what a
deposition's all about?

A. Yes, we can.

Q. Okay.

MS. HARDING: Michael,
would you mind if I made a quick
statement on the record?

MR. BROWN: Sure.

Page 13

further than seven hours to get to
the appropriate inquiry as to how
the Plan operates. So I just
wanted to get that on the record.

MR. BROWN: Okay.

Actually, that's helpful. Maybe I
could follow up with a question for
Mr. Finke.

Q. Mr. Finke, have you
reviewed Mr. Lockwood's Rule 30(b)(6)
deposition transcript?

A. Yes, I have.

Q. Okay. Is there anything
that you read in that transcript that you
disagreed with?

A. No, nothing of substance.

Q. Okay. How about anything
not of substance?

A. There are a few occasions,
I think, where I either would have worded
something differently or where I think Mr.
Lockwood may have been either in error --
might have been in error depending on
whether he was -- depending on the

Page 14

1 context. Let me give you one example of
2 that.

3 **Q. Sure.**

4 A. He, I think, made a
5 statement at one point where he equated
6 asbestos in place coverage or insurance
7 coverage with the asbestos insurance
8 reimbursement agreements. I believe he
9 said he thought they were the same thing,
10 and perhaps in substance or in concept
11 they are. I'm not an insurance lawyer,
12 but I know that under the Plan
13 definitionally the definition of asbestos
14 (sic) in place insurance coverage
15 specifically excludes asbestos
16 reimbursement agreements from the
17 definition.

18 **Q. Okay.**

19 A. Which would suggest they
20 are not the same.

21 **Q. All right. I'm going to**
22 **suggest that Miss Alcabas, or one of the**
23 **people whose issue that is, may want to**
1 **follow up with you on that point.**

Page 15

1 A. Sure.

2 **Q. But let's pass on that.**

3 **Other than what you've just**
4 **described, is there anything else in Mr.**
5 **Lockwood's deposition transcript that the**
6 **debtors disagreed with?**

7 A. Nothing that comes to
8 mind.

9 MR. BROWN: Okay. Let me
10 have the first exhibit marked, and
11 can we go off the record for a
12 second.

13 (Off the record.)

14 (Notice of Deposition of
15 Debtors Pursuant to Rule
16 30(b)(6) marked for identification
17 as Exhibit Finke-1.)

18 (Document entitled W.R.
19 Grace/Confirmation Hearing 30(b)(6)
20 Deposition Notice marked for
21 identification as Exhibit
22 Finke-2.)

23 BY MR. BROWN:

24 **Q. Mr. Finke, I'm going to put**

Page 16

1 **before you two exhibits marked -- we're**
2 **using the term Finke 30(b)(6) 1 and Finke**
3 **30(b)(6) 2. For shorthand during the**
4 **deposition I'll just refer to them as**
5 **Finke-1 and Finke-2. Could you identify**
6 **Finke-1 for me, please?**

7 A. It is a Notice of
8 Deposition of Debtors Pursuant to Rule
9 30(b)(6) served by One Beacon, Seaton,
10 Geico and Columbia.

11 **Q. Going forward, it would be**
12 **more accurate to refer to Columbia as**
13 **Republic. I know it says Columbia there.**
14 **The date on here is April 28th, 2009 and**
15 **the site is Drinker Biddle & Reath's**
16 **offices but we obviously changed those by**
17 **agreement after this was scheduled.**

18 **Is it your understanding that**
19 **you're appearing here today in response to**
20 **this Rule 30(b)(6) notice?**

21 A. Yes.

22 **Q. And there were several**
23 **others served on you as well?**

24 A. Correct.

Page 17

1 **Q. Correct, all right.**

2 **If you look at what's been marked**
3 **as Finke-2, can you identify that for**
4 **me?**

5 A. It is a chart 18 pages long
6 entitled W.R. Grace/Confirmation Hearing
7 30(b)(6) Deposition Notice Witness
8 Designations.

9 **Q. Okay. And is it your**
10 **understanding that this document was**
11 **prepared by your counsel?**

12 A. Yes, that's my
13 understanding.

14 **Q. And have you seen it before**
15 **today?**

16 A. Yes.

17 **Q. Okay. And am I correct**
18 **that it basically lists all the various**
19 **topics from all the 30(b)(6) notices that**
20 **were served on Grace and then designates**
21 **one of, I believe, three individuals to**
22 **testify about the various topics?**

23 A. I would agree that it
24 includes all 30(b)(6) notices that have

Page 114

1 they're also Class 6 claims, correct?

2 A. Correct.

3 **Q. And indemnified insurer TDP**
4 **claims are also Class 6 claims, correct?**

5 A. I believe so but I'm going
6 to go back and reread the definition
7 again.

8 **Q. Okay.**

9 (The witness reviews the document.)

10 A. Yes.

11 **Q. Can you describe for me the**
12 **factual basis for putting all of those**
13 **claims in the same class?**

14 MS. HARDING: Object to
15 form. Calls for -- to the extent
16 that it calls for a legal
17 conclusion and --

18 A. I would refer to the --

19 THE WITNESS: I'm sorry.

20 MS. HARDING: -- and
21 attorney-client work product
22 privileges to the extent that they
23 apply. But if you can still
24 answer, go ahead.

Page 116

1 of asbestos PI claims. It is those --
2 those set of circumstances that result in
3 all of these claims being classified as
4 Class 6 claims.

5 **Q. What are the similarities**
6 **between the claims; that is, between the**
7 **personal injury claims and the contractual**
8 **indemnity claims, if any?**

9 MS. HARDING: Object to
10 form.

11 MR. LIESEMER: Object to
12 form.

13 A. Assuming you're referring
14 to contractual indemnity claims arising
15 out of, directly or indirectly, an
16 asbestos PI claim, the similarity is that
17 the underlying claim is by a person who
18 alleges -- and I'm just paraphrasing
19 because I don't want to read this entire
20 definition -- but alleges that he has
21 contracted an asbestos-related disease due
22 to exposure to asbestos from a Grace
23 product or operation.

24 **Q. Anything else?**

Page 115

1 A. My answer would be to refer
2 to the terms of the Plan and the
3 definitions. The definitions of asbestos
4 PI claims would incorporate the factual
5 basis of those claims.

6 **Q. All right. I'm asking a**
7 **broad question, I think, Mr. Finke, and**
8 **I'm not asking for a legal conclusion.**

9 MS. HARDING: Okay.

10 And --

11 **Q. I'm asking for what is it**
12 **that's factually similar about these**
13 **claims that warrants in the debtor's view**
14 **placing them all into Class 6.**

15 MS. HARDING: Object to
16 form.

17 MR. LIESEMER: Object to
18 form.

19 MS. HARDING: Foundation
20 and it...

21 A. I may be misunderstanding
22 your broad question, but I have to again
23 respond by referring to the factual
24 circumstances laid out in the definition

Page 117

1 MS. HARDING: Object to
2 form.

3 A. I don't understand your
4 question.

5 **Q. My question is: Is there**
6 **any other basis for classifying the**
7 **contractual indemnity claims that we've**
8 **just been discussing with the personal**
9 **injury claims, the asbestos personal**
10 **injury claims?**

11 MS. HARDING: Object to
12 form.

13 A. The basis I've laid out for
14 the definition of asbestos PI claims.

15 **Q. Okay. Mr. Finke, why are**
16 **contractual indemnity claims arising from**
17 **the asbestos claims that you just**
18 **described placed into Class 6 while other**
19 **contractual indemnity claims against Grace**
20 **are placed into Class 9?**

21 MS. HARDING: Object to
22 form and to the -- and object to
23 the extent it calls for a legal
24 conclusion. If you can answer, go

Page 118

1 ahead.

2 A. Because the contractual
3 indemnity claims that arise based out of
4 an asbestos PI claim all seek to impose
5 liability upon the debtors as a result of
6 the debtors' asbestos-related products or
7 operations.

8 **Q. Okay. Is Fresenius a**
9 **separate entity from any of the debtors**
10 **today?**

11 MS. HARDING: Object to
12 form.

13 **Q. Separate legal entity.**

14 A. Yes.

15 **Q. How about Sealed Air**
16 **Corporation? Is that a separate legal**
17 **entity?**

18 A. Yes.

19 **Q. And they're both**
20 **non-debtors, correct?**

21 A. Correct.

22 **Q. Are they -- do they have**
23 **separate -- does Fresenius and the debtors**
24 **have separate management?**

Page 120

1 **Q. Do any of the debtors**
2 **control Fresenius?**

3 A. No.

4 **Q. Do any of the debtors**
5 **control Sealed Air?**

6 A. No.

7 MR. BROWN: How did we mark
8 the transfer agreement?

9 MS. BAER: The insurance
10 transfer agreement is Exhibit 4.
11 (Off the record.)

12 BY MR. BROWN:

13 **Q. We talked about this**
14 **earlier. Can you take a look at Schedule**
15 **1 to Exhibit 4?**

16 A. Yes.

17 **Q. My question is: Does**
18 **Fresenius have any rights under the**
19 **policies listed on Schedule 1?**

20 MS. HARDING: Object to
21 form.

22 A. I don't believe so.

23 **Q. How about Sealed Air?**

24 A. I don't believe so.

Page 119

1 A. Yes.

2 **Q. And would your answer be**
3 **the same with respect to Sealed Air and**
4 **the debtors?**

5 A. Yes.

6 **Q. Does Fresenius and the**
7 **debtors or do Fresenius and the debtors**
8 **have any shared operations?**

9 A. Not that I'm aware of.

10 **Q. Do Sealed Air and the**
11 **debtors have any shared operations?**

12 A. Not that I'm aware of.

13 **Q. Do any of the debtors have**
14 **any ownership interest in Fresenius?**

15 MS. HARDING: Object to
16 form.

17 A. I don't know but I'm not
18 aware of any.

19 **Q. Do any of the debtors have**
20 **any ownership interest in Sealed Air?**

21 MS. HARDING: Same
22 objection.

23 A. Again, I don't know but I'm
24 not aware of any.

Page 121

1 MR. BROWN: Why don't we
2 take a five-minute break. I may be
3 finished.

4 MS. HARDING: Okay.
5 (Recess taken.)

6 BY MR. BROWN:

7 **Q. Mr. Finke, I have a few**
8 **more questions for you and then I'll pass**
9 **you along to the next questioner.**

10 **Can you take a look at Section 11.9**
11 **of the Plan again? That's the exculpation**
12 **provision.**

13 A. Yes.

14 **Q. Do you understand the scope**
15 **of the exculpation provision in terms of**
16 **the entities and individuals that are**
17 **actually exculpated under this**
18 **provision?**

19 MS. HARDING: Object to
20 form.

21 A. Yes, I believe I do.

22 **Q. Okay. Well, let me give**
23 **you a couple of examples. It's includes**
24 **the Asbestos PI Committee, correct?**

Page 122

1 A. Yes.

2 Q. And we talked a little
3 about the Asbestos PI Committee being
4 individual asbestos claimants, correct?

5 A. Yes.

6 Q. And you testified that, by
7 and large, they perform their duties as
8 committee members through their asbestos
9 personal injury counsel, correct?

10 A. Correct.

11 Q. Okay. And that would
12 include, among other individuals, Mr. Rice
13 and his law firm, correct?

14 A. Yes, I believe that's
15 right.

16 Q. And Mr. Cooney and his law
17 firm?

18 A. Well, I guess what I don't
19 know is which of the -- which of the
20 asbestos plaintiffs' attorneys we've
21 identified are -- or have clients that are
22 members of the committee. I just don't
23 recall.

1 Q. Okay, fair enough.

Page 124

1 A. Yes.

2 Q. Why don't you go to the
3 defined term Representatives which appears
4 at 33 of the Joint Plan. It's definition
5 number 177.

6 MS. HARDING: I think I
7 lost the line of -- did you
8 previously ask if the TAC was
9 covered --

10 MR. BROWN: Yes.

11 MS. HARDING: -- by the
12 exculpation in 11.9?

13 MR. BROWN: Yes.

14 MS. HARDING: I'm just
15 looking and I don't see that so I
16 just wanted to make sure that the
17 record wasn't unclear.

18 MS. BAER: Barbara.

19 MR. BROWN: Asbestos PI
20 Trust Advisory Committee.

21 MS. HARDING: All right.

22 MR. BROWN: We're happy to
23 have it taken out.

24 MS. HARDING: No, no. I

Page 123

1 There are also -- the TAC is within
2 the scope of this exculpation provision,
3 correct?

4 A. Yes.

5 Q. So it would include the TAC
6 members, Mr. Weitz, Mr. Cooney, Mr. Budd
7 and Mr. Rice, correct?

8 A. Correct.

9 Q. And to the extent that the
10 firms -- to extent that any members of the
11 Asbestos PI Committee are represented by
12 the firms of Mr. Cooney, Mr. Rice, Mr.
13 Weitz and Mr. Budd, they too would be
14 covered by it, correct?

15 A. Correct.

16 MS. HARDING: Object to
17 form.

18 Q. All right. Now, about
19 halfway down the provision it has a phrase
20 that says "or any of their respective
21 Representatives". Do you see that?

22 A. Yes.

23 Q. And Representatives is in
24 initial cap R, correct?

Page 125

1 was talking because I was going too
2 fast and I just didn't see it and I
3 wanted to make sure.

4 A. Okay.

5 Q. Sitting here today and
6 looking at the defined term
7 Representatives and seeing its use in
8 Section 11.9 of the Plan, do you have any
9 idea of the scope of this exculpation
10 provision in terms of who's covered by
11 it?

12 MS. HARDING: Object to
13 form.

14 A. Well, certainly the
15 definition of Representatives gives me an
16 idea as to the scope of the exculpation
17 provision.

18 Q. Okay. But I mean the
19 actual identities of the individuals, you
20 couldn't -- you couldn't give me a list
21 today, could you?

22 A. No.

23 Q. Okay.

24 A. I could not.